

Law Vol. 5.

A
L E T T E R
T O

RICHARD WHITWORTH, Esq;

K

MEMBER of PARLIAMENT

For the Town of Stafford;

ON HIS

Publishing a BILL, proposed to be brought
into PARLIAMENT, for amending the Laws
relating to the GAME, *and pretended to be*
for the Ease and Liberty of the People.

L O N D O N :

Printed for J. WILKIE, St. Paul's Church-yard.
M.DCC.LXXII.

LETTER

TO

RICHARD W. H. H. H.

Member of Parliament

For the Town of ...



I have the honor to acknowledge the receipt of your letter of the 14th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

Yours faithfully,

W. H. H. H.

A
L E T T E R

T O

RICHARD WHITWORTH, Esq;

Member of Parliament for the Town of Stafford.

S I R,

A Little leisure in the country has given me an opportunity of reading, with some attention, your plan of a bill for repealing the present laws relating to the Game, and enacting a new one in their stead; and, as I am not a member of that august house, *which you so often convince by your reasons, and charm with your eloquence,* I have no other means of submitting my

B

ob-

observations to the consideration of the members, than this public one.

I as earnestly wish an alteration in the game laws as you can do, but am sorry when I see a gentleman, by an ill-judged attempt at a reformation, remove the desired amendment to a still greater distance. That in their present form they are oppressive, is supposed by many; that some of the penalties (the later ones particularly) are unreasonably severe, is confessed by almost all; tacitly confessed by the very authors of the law, having never, as I have heard, convicted any one in them, which I suppose may be owing to their seeing the inequality between the crime and the punishment. But, Sir, it can never be expected, that the persons who made many of them will be induced to repeal those laws, by an act which, in the outset, charges them with having betrayed their trust, by framing them in a manner totally inconsistent with their duty to their representatives, inconsistent with the genius of a free people. It can never be expected that the people will be satisfied by an act which sets out on the principle of relieving them from the heavy penalties to which they are now subject,

and

and yet inflicts, as I shall shew by and by, heavier penalties, and lays them under greater disabilities, than any ever yet imposed.

I mean to go regularly through your performance, pointing out what appear to me the errors therein, in such a manner as, I hope, may induce you to withdraw, or at least to amend, your plan, as well as to new-model the wording. The latter is a circumstance, which, I am sorry to say, is too little attended to, tho' of the utmost consequence to the lives and property of the people, as is well known to every one who is in the least conversant in the courts of justice, where the judges are bound to deliver the law *as it is*, not *as it should be*; and where a slip, though ever so palpable, cannot be amended. There is a shadow of an excuse for the man who *speaks* incorrectly in a public assembly; but what excuse can be made for a senator, deliberately sitting down to write a law which is to affect materially the property of his representatives and fellow-subjects, without knowing the laws he is to repeal, or the effects of what he writes, or even without being able to write English?

You

You say, " The multiplicity of the present statutes relative to the preservation of the game, seem rather to confuse and perplex, than to point out and determine in whose power the laws have lodged either the property or the right of killing and preserving the game." The multiplicity of those laws are certainly a grievance; but I apprehend they have vested the property in, having given the right of killing (under certain restrictions) to, the lord of the manor, or a person having a freehold estate of 100 l. per ann. or a leasehold of 150 l. the former is empowered to kill either by himself or his game-keeper legally appointed, the latter can only kill by himself. And as to the right of preserving the game, it seems very clearly vested in the lord of the manor alone, he being authorized to appoint a game-keeper, whose name implies, in the strongest manner, his office; and which game-keeper may take away nets and snares from any unqualified person *whom he finds using them*. Altho', indeed, it may be said, that the right of preserving is given to every man, as every man may exercise that right, by levying penalties on persons unqualified, who presume to kill.

You

You say, "It seems highly expedient, that some one law should be framed and modelled suitable to the genius of the people, to the intent that each person may enjoy all the benefit of that property, be it ever so small, which seems now little more than nominal." I admit it to be highly expedient, that the present laws should be reduced into one; but if, as I suppose, the property is already vested in the persons above described, your proposed law, instead of providing that *every one* may enjoy the benefit of his property, absolutely deprives one set of people, the lords of manors, of it entirely, as I shall further observe by and by. I know not what reason can be given for transferring *their* property in the game to the farmer, which will not hold good for transferring the property in the land itself from the man who has a very large quantity of it, to the man who has very little or none. By the law of nature, every man had an equal right to what land he could take possession of, and what game he could kill; but by the law of the society to which we belong, and by which you confess we ought to be governed, the property of each is given to certain persons, exclusive of others. If you suppose
the

the farmer ought to have the game, because it is fed on land for which he pays an annual rent, on corn which he sows; why should he not have the trees growing on the same land, when it is well known, that trees which have large boughs destroy tenfold more corn, by blighting what grows under them, than all the game that ever was seen on one farm could ever do.

Amongst the laws which you would repeal, you have forgot several which remain still in force, amongst which is the 33. H. VIII. c. 6. which inflicts a penalty of ten pounds on any one shooting in a gun or cross-bow, who has not 100 *l. per annum* in land; and you repeal some very useful clauses in others, amongst which is a clause in 5. A. c. 14. to prevent the burning of heath, &c. in the forest of Sherwood; and which it were to be wished, both for the sake of game and other things, were made general.

Your next clause extends the denomination of game to very many kinds of *feathered or two-legged animals*, and to some four-legged, which were before considered as *feræ naturæ*, and might be taken by any body (except by shooting)

ing) and consequently deprives a very large part of the people of this country of a *kind of property* (as you call what you intend by this act to give them); any person being at present at liberty to take or kill most sorts of *wild feathered animals*, if in so doing he does not offend any of those laws which restrain the liberty of shooting.

This clause will also pretty effectually *take away the property* which people now have in pigeons, as it will be impossible for any one to keep a dovecoat, which is not done without a good deal of expence, if the owner of any field in which they may chance to alight, may take all, or so many as he likes, for his use; for the art of man can never invent a method of confining pigeons to a man's own field.

The power now remaining in a lord of a manor, merely as such, as to the game, is not so great as to make him the mark of envy. One would think, that unless it was designed to establish an absolute democracy, he might have been allowed a shew of some little pre-eminence above the mere farmer: but you, Sir, think otherwise. *He* is the man who, having, at present, some *kind of property* in the game, is to be totally

totally deprived of that property, without any satisfaction for it. So long, indeed, as there remains a waste or common uninclosed, of *more than forty acres, lying together* in one parish, you do give that lord of the manor who holds a court leet *and* court-baron annually, *and* has a freehold of twenty pounds a year, a property therein——*a kind of property* you should rather say, as it is to be in the power of persons having three fifths of the land which gives a right of common in such waste, to take away that property entirely, without his consent, and expressly without allowing him any advantage or recompence in lieu thereof. Is this, Sir, “consistent with the law of God, or the reason of man?” But if the lord of the manor happens to have no waste or common of more than forty acres lying within his manor, *in one parish*; if he does not hold a court leet *and* court-baron *annually*, (which perhaps a majority of lords of manors do not do); or, these two requisites being wanting, if he has land of only ninety-nine pounds a year, he is absolutely deprived of all right and property in the game, and is put into a worse condition than a mere farmer of 100 l. a year, unless he should happen to be a farmer himself.

If

If the common lands do not exceed forty acres, lying together in one parish, and the common shall belong to more freeholders than one, the game shall be the property of no individual, but shall belong to all the occupiers of freehold land, or those who claim and enjoy, from their possessions, a right of common jointly, the annual value of such freehold or possession not being less than one hundred pounds: and if any person kill and destroy game thereon without consent of the majority of the occupiers, or persons enjoying right of common therein, he shall be subject to the penalty of your act, on complaint of any *two* persons authorised by this act to give such consent.—If then there should happen to be no estate of one hundred pounds a year, which has a right of common on a waste or common ground of less than forty acres, (no improbable supposition in many places) is the game thereon to be the property of no individual, and may *any person* kill it? If there should be *one* such estate only, any person may still kill the game there without being subject to any penalty, as the complaint must be made by *two* persons having, or occupying, estates of one hundred pounds a year.

By a former clause, in which you extend the denomination of game much farther than it ever has been hitherto, you declare, "That it shall be the property of the occupier of the land or water in or over which it is, during its continuance there; who shall have liberty to take and kill the same by all such ways and means as are not by this act prohibited to be made use of in the killing or taking thereof." The farmer, reading this, would naturally imagine, that he is to be at liberty to shoot or hunt, but that he shall find some restrictions by and by as to nets, or other engines, or perhaps as to certain times; but if he does imagine this, he will find himself much deceived, and will be somewhat surprized, as well as disappointed, to find, that his landlord, whether great or small, may at any time, with or without his consent, absolutely prevent his ever killing, not only what is now called game, but those animals which often do him great and material injuries, foxes and rabbits, and perhaps I may add rooks. The clauses by which you reserve to the landlord a right to take all the game, do, as I apprehend, destroy the very principle on which you pretend to found your law, and will besides occasion numberless quarrels.

Your

Your first clause, relating to hunting, at once deprives a very large part of the people of the pleasure of attending that sport; the qualification which you think necessary to entitle a man to it, being no less than four hundred pounds a year; a qualification which very few possess, it being beyond the estate of a yeoman, and the race of middling gentry being reduced to a very small number in all those parts of the country in which I happen to have any acquaintance. By your next clause, a man who actually has a qualification of his own, is forbid to keep any hound, greyhound, lurcher, or setting-dog, if he should happen to let his own land, and rent ever so large a quantity of another person, unless his landlord shall please to permit him so to do; a hardship, at present, unknown to our laws. But the difficulties which follow are so many, and so great, that should your act pass, very few who are qualified can ever venture to hunt; and very few who wish to prevent trespasses on their lands, will be able to do it: for, notwithstanding by one clause you give *a kind of right*, in virtue of your exception, to a qualified man who goes with *above ten couple of bounds*, to pursue the
game

game he has started on his own land, into that of another, yet you then say, that " the great law, on which basis the fabric of this government stands, is, and must be understood to be, that *no person* shall trespass in *any manner* on the lands of another without his consent:" and go on: " And whereas several persons qualified as this act directs, will, and do keep packs of hounds for their diversion, for the purpose of hunting stag, &c. and do great injury to the lands and property of others during the pursuit of their Game, which is found on their own, or on such lands as any occupier, tenant, or land-owner, may give leave; be it enacted, That when any person following any pack of hounds, consisting of not less than ten couple, being out hunting that day, or any person, with a greyhound, shall be in pursuit of such Game so found, and shall trespass on the land of any such person without his or their consent, that *then* it shall be lawful for the said occupier, tenant or land-owner, to give notice in writing to the master of the hounds or greyhound, or to each or any person so trespassing, whether on horseback or foot, to keep off the said premises

premises of such occupier, tenant or land-owner ; and after such notice in writing *so* delivered, *and not until then*, and for such offence only as is committed after such notice, the said occupier, tenant or land-owner, shall be at liberty to bring his action of trespass against any person so offending ; and when any action shall be so brought, and the jury shall find for the plaintiff ; then, in such case, the damages shall be not less than ten shillings, nor more than twenty shillings, and each pay their own costs."

As the law stands at present, a farmer may give notice in writing to the greatest man in the land, not to come on his grounds either to hunt or shoot ; and if, after such notice, he does come, the farmer may bring his action of trespass, and will have his costs, though the damages given by the jury should be only one penny. By this means he *may* be secure from the inroads of his most potent neighbours, if he pleases. But, by your clause, he cannot give notice till the hunter is actually on his lands ; and then, if he can go home, get a pen and ink, write his notice, saddle his horse, and overtake the hounds at full speed, *on his land*, he may make the offender liable to a penalty of twenty shillings, to
be

be recovered in an action, which he must bring at his own expence, which will be twenty pounds, (on a *very* moderate calculation) and then he will recover twenty shillings, whilst his adversary, being on the defensive, is not at more than one half the cost. The farmer may, indeed, recover a penalty of five pounds besides (*after notice*) before a justice, but still that will not much aid him in the costs of his suit.

What follows about fresh Game, and the dogs being at fault for an hour, is hardly intelligible; but it *seems*, if fresh Game is started on the lands of another, pursued and killed on the lands of a third, *it is to be delivered to the third person, if his house is within a mile of the place where killed*; if it is not, it seems the trespasser may take it to his own use.

The two following clauses carry a severity with them unknown to the most rigid Game laws, unattempted by the most strenuous asserter of them, and not to have been expected from one who professes himself the champion of the people, against the aristocratic power of the nobles and great men. "And in case *any* person shall

shall be found on foot on any lands not being his own, or where leave is not given, six yards distance from any public foot path or road, between the hours of eight at night and four in the morning, he shall be liable to the general penalty :” That is, he may be carried before a justice, fined five pounds, and in default of payment, or sufficient distress, be committed to the house of correction for six months—for what?—for amusing himself with a walk in a summer evening to the summit of a hill, to the edge of a wood, to the bank of a river, without any the most distant thought of catching, without any kind of instrument to catch, game of any sort.

You next forbid any person, “ not having lands of his own to the value of five pounds, nor occupying thirty pounds *per ann.* to have or keep in his custody or possession any gun, except on the king’s highway”—except gun-smiths and the menial servants of persons having right. Have not tradesmen generally in their houses property out of any proportion larger than a farmer? Are there not great numbers of tradesmen, who neither have five pounds a-year in
land

land of their own, nor occupy thirty pounds *per ann.* (even if the latter is comprized in house-rent, which does not seem the intention) and have not they as good a right to defend their property as any other men?

I have now gone through and mentioned such objections to the several clauses in your proposed bill, as may strike, and, I should have supposed, would have occurred to any gentleman who read it over, whether conversant in the nicer matters of law or not: but I have some few things more to say, on matters which must strike every one, who is at all acquainted with the law of this country. It will little avail you to say, that the law has not been your study, as, in that case, you ought to have consulted some one whose study it has been, on those parts of your designed act, which it certainly requires *some* legal skill to frame properly.

The penalties you inflict are, *in all cases*, to be levied by a justice of peace, or recovered in an action, except in the case of a person not qualified according to your description, who shall have in his custody or possession (unless
upon

upon the lands of his master) any game; he may be carried before the next justice, under charge of a constable, or taken up by warrant or information, be there examined *on interrogatories* how he came by it; and if, by his answers, it shall appear he has taken it, or has it in possession without one of your qualifications, or has stolen it, he is to be subject to the general penalty of your act (five pounds); and the constable may be bound over *to indict and prosecute to effect* any such offender (*where the general penalty has not been levied for the same offence before*) at the next *general assizes or quarter-sessions*; and all expences relative to the prosecution shall be borne by the county, and paid by the treasurer of the county—and where any person shall be found guilty of any offence against this act, he shall be subject to a general penalty of five pounds, to be levied upon his goods, chattles, lands or tenements, by distress, by warrant to the constable of such justice before whom such offence is proved; and, in failure of distress, may be committed to the house of correction for six months.—By this clause, an offender is to be carried before a justice, to be examined *on interrogatories*, to prove himself guilty; the

D

justice

justice is then to bind the constable over to indict the offender *at the assizes*, where the constable's oath of *what the prisoner has said*, or his confession to the justice, is to be sufficient evidence : and—what then? My lords, the King's justices of assize, if they can do any thing, are to send back to the justice to levy the five pounds by distress ; or, in default thereof, to commit the offender to the house of correction for six months ! Here is a very considerable expence to be brought on the county, and paid out of the county rate, (*which is levied principally on the farmer*) for what ? To do that which the justice could have done at once, without any expence at all.

You say, that the general penalty of the act may be recovered by action, as well as before a justice. No man, Sir, is intitled to costs in an action for a penalty given by act of parliament, unless that act gives the costs : and I have before mentioned, that a plaintiff's costs will amount to at least twenty pounds on a *very moderate calculation*.

You

You provide, That if any person shall think himself aggrieved by *any thing* done in pursuance of this act, such person may appeal to the justices of the peace at the *next* general quarter-session of the peace to be held for the county, or place wherein the cause of complaint shall arise; and within four days after the cause of such complaint shall have arisen, such appellant giving, or causing to be given, *fourteen days notice* at least, in writing, of his or her intention to bring such appeal——Shall a person, whom the constable is bound over to indict at the assizes, by direction of the justice, or a person actually there indicted, and found guilty, appeal from that court to the quarter-session? This would be an anti-climax indeed——But suppose the information is not laid within four days after the cause of complaint, shall he have no appeal at all? Suppose he is convicted before a justice thirteen days before a quarter-session——he cannot give fourteen days notice of appeal——his appeal must be to the *next* quarter-session——Shall he have no appeal? The latter objection has been so hackneyed on a late act of parliament, that I could hardly have imagined any one, especially a member of parliament,

liament, could so soon have fallen again into so strange a mistake.—But this serves to shew still more strongly how very improper it is, that *every* man who gets into parliament should think the taking his seat qualifies him to be a framer of laws. The preamble of your act seems intended to catch the people, to make them believe you are a strenuous assertor of their liberties ; that you mean to deliver them from the aristocratic power of those tyrants, the lords of manors, and other great men. I hope I have shewn, that, so far from answering that end, your plan will, besides the palpable injustice to some persons, leave the farmer in a considerably worse state than he now is.

Let us re-consider, for a moment, who is to be benefited by this act, and who injured. The owner of four acres of land, or upwards, or of a tenement of forty shillings a year, or upwards, has that privilege given him, which is at present confined to persons of a considerably different station in life ; a privilege which will be extended much too far, as it will let in cottagers, and many other persons whose time it has always hitherto been thought would be much better employed

employed in labour, than in pursuing game. This is the only person who gains a new right by your law, unless you will say, that the qualified man is a gainer by being able to trespass on his neighbour; and having the privilege to defend himself in an action, at his own costs only, whilst his adversary is at double the expence. Has the occupier any new *right*?—None—His landlord may more effectually prevent his tasting a partridge or hare, than any the most tyrannical lord of a manor can now do: and surely a man cannot be said to have acquired a right to game, when it is in the power of another to deprive him of it at any time, without his consent. He is, in fact, put into a worse state than he is in at present, as I have shewn that he may *now* bring an action for a trespass, and recover his costs; but, by your act, he is only to be allowed to bring his action, if he is able to perform the previous requisites, at his own expence; but, if he cannot perform those previous requisites, (which, in the case of hunting particularly, he will hardly ever be able to do) he is deprived of all redress. The lord of a manor is to be deprived of a right which he has enjoyed for ages, but enjoyed in such a manner

manner as cannot be burthensome to the farmer, unless by his own consent, he having now power to forbid the lord's coming on his land.

The tradesman, and person who does not occupy thirty pounds a year, or is not possessed of five pounds a-year in land, is to be deprived of defence, by being prohibited the keeping a gun in his house ! and *every man* is to be liable to a penalty of five pounds, who shall happen to stray out of a path after eight o'clock at night !

And these, Sir, are *the great, the wise* purposes intended by this act ! This is the *new law which is to keep pace with the boasted freedom of this country* ! This is *really and truly to give the land-owner the noblest of all his titles, that glorious name of a British Freeholder*—Parturiunt montes !

Indeed, as the lord of a manor seems so much the object of your resentment, I wonder that in your plan of giving the land-owner a *perfect* title to the glorious name of a British Freeholder, you have not extended the provisions of your
act

act a little further, and, together with the game, taken away from the lord those rents and services to which he is intitled from the freehold, as well as copyhold, tenants of his manor; the quit-rent, the heriot, the relief, the fealty, the suit of court, are certainly the remains of the feudal tenure: but perhaps this act is only an introduction to your democratic plan, and is to be followed by others more extensive.

I believe, Sir, the people of this kingdom do begin to see the error of trusting to every one who cries, Liberty! My Country! They do begin to see that something more than a mere opposition to government is requisite to form the *real patriot*: they do expect to see an active, not a mere negative, zeal; and to have laws proposed of *real* public utility, not such as this which I have been now considering, which has liberty in the preamble only, tyranny in the body; and which, indeed, would have been beneath notice, unworthy of an answer, were it not circulated by the news-papers amongst a class of people, who may not be *all* able to see the inutility of it to the end proposed, and the mis-

mischiefs with which it is pregnant. My observations have, unavoidably, run beyond the limits of a news-paper, or I should not have taken any other method of making my sentiments known, and that must be my excuse for intruding on the public in the shape (however humble) of an author. But that you may not object to me an intention to subvert your fabric without offering any thing in its room, I beg leave to submit, with the greatest deference to the legislature, some hints which have occurred and been suggested to me.

If the intention is to remove the grievances of the game laws; suppose the occupier, whether of one hundred pounds or ten pounds *per ann.* should have liberty to *shoot on the land he occupies*, not killing in any one season more than birds for every acres he shall occupy; the farmer would then have no reason to complain: and, I am persuaded, from some little experience, the game would be in at least as great plenty as it is now where that is not suffered; as it is well known the farmer, who has now no temptation to preserve it, may destroy more birds with

with his foot than any lord of a manor can kill in a season, by only treading on a few nests ; but if he had liberty to kill a partridge, he would have an interest in preserving the breed : and *he*, and I may say *he only*, has it in his power to destroy the nests of poachers, which abound every where, though a gentleman cannot easily detect them. The farmer knows who they are, and where they come, and would effectually prevent them, if he were to enjoy in some degree the fruits of his care. The poacher who wastes his nights in the use of nets and snares, cannot work in the day, spends his money as idly as he gets it, and neglects his family, who are frequently or commonly kept by the parish. This man the farmer can always detect. He would then have an interest in preventing the lower kind of tradesmen from neglecting their shops to follow their diversions ; a restriction of liberty which, I believe, no thinking man will deny to be a proper one.

But suppose, in order to lay the farmer under some necessity of preserving the game, in return for this privilege, a penalty of ten shillings

E

were

were laid on him for every hare, pheasant or partridge, killed on his ground in the day-time by any labourer, artificer, or unqualified person, for which he should not prosecute before a justice of peace, in three days after the offence.—Your clause, as to the Justice examining into the defendant's qualification, and the proof lying on the defendant, is right, but seems hardly carried far enough.

As the law stands at present, a stranger found shooting, and taken before a justice of peace, tells the justice that he is qualified.—The justice inquires what his qualification is, or where it lies; he is told that no answer will be given to those questions; that if he convicts, he does it at his peril. The justice is alarmed, and probably dismisses him.

Suppose it were enacted, that a stranger found shooting should be subject to the penalty, unless he delivered immediately to the justice a true account, in writing, of his qualification, and enter into a recognizance in double the penalty, to appear and answer,
if

if that qualification should, on inquiry, be found an insufficient one. Or if, instead of being carried before a justice, an action should be brought, suppose the qualification were declared void, unless, immediately on being served with a copy of a writ, he give an account of his qualification, in writing, to the plaintiff, or his attorney, and the penalty be doubled, if that qualification be found an insufficient one.—

It has happened, however improbable it may seem, that a man, *calling himself a gentleman*, possessed of a qualification, hearing that there was a large quantity of game on the manor of one he never saw, in a country in which he had no property, or any one acquaintance, has fixed himself at some inn or alehouse, and thought himself at full liberty to shoot, hunt, kill and destroy all the hares, pheasants, and partridges he could meet with——Surely this is a very great insult and abuse——We have had some unhappy instances of its being thought so.

Suppose

Suppose it were enacted, that no person, however qualified, should shoot out of the parish or manor in which he lives, except in his own manor, or on his own property, or in company with the owner, without leave of the lord of the manor——It seems to me, that no *real gentleman* could consider this as a hardship, and that it would be some protection to the farmer. If neighbours are on good terms, no inconvenience can arise to either; if on ill ones, they ought not to trespass on each other.

Suppose that the prohibition of killing grouse, black and red game, were extended to the middle of August——I fear the havoc which has been made therein of late years will render something absolutely necessary to be done, even for preservation of the species.

Your restriction of killing hares between the first of March and the first of September, is certainly right, as well for the sake of humanity as of the game. Sportsmen know
how

how generally female hares are with young after Lady-day.

These, Sir, are some things which have occurred to me; but I pretend to no more than giving hints. Should you, or any gentleman of the House of Commons, propose a law which may have any probability of passing, founded on reason and good sense, and *really* calculated for the ease of the people, the attempt will deserve and receive the thanks of every British freeholder and farmer.

F I N I S.

how generally female hares are with young
after Lady-day.

These are some things which have
occurred to me; but I pretend to no more
than giving hints. Should you or any
other of the House of Commons propose a
law which may have the effect of
being founded on good sense and
being calculated for the benefit of the
people, the House will receive and consider
it with every kind of freedom and candour.



od
als
oc
th
the
la
la
re
th
th

